REMARKS

At the time of the First Office Action dated December 5, 2007, claims 1-20 were pending and rejected in this application.

CLAIMS 1-20 ARE REJECTED UNDER 35 U.S.C. § 102 AS BEING ANTICIPATED BY GAI ET AL., U.S. PATENT NO. 6,167,445 (HEREINAFTER GAI)

On pages 3-18 of the First Office Action, the Examiner asserted that Gai discloses the invention corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single reference.[1] Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.[2] As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference.[3] This burden has not been met.

[1] In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).
[2] See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).
[3] Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

Claim 1

Independent claim 1, in part, recites "a systems administration component coupled to a system under study," and to teach these limitations, the Examiner cited column 9, lines 51-55 of Gai and inferred that the "dissimilar intermediate devices" correspond to the claimed system under study. Applicants respectfully disagree. The dissimilar intermediate devices, however, are not described by Gai a system under study, as claimed.

Independent claim 1 further recites a workflow component that routes stimuli and response data to a policy maker and a policy generation component that generates an administrative policy for administering the system under study based upon data from the policy maker. Thus, the policy generation components uses data from the policy maker. However, referring to pages 3 and 4 of the First Office Action, the Examiner is referring to the same element (i.e., the policy server 322 which includes a policy rule generating engine 414). In this regard, Applicants are unclear as to what feature within Gai corresponds to the claimed policy maker and what feature corresponds to the claimed policy generation component.

On page 3 of the First Office Action, the Examiner asserted that the claimed "stimuli and response data" (i.e., from the system under study) is identically disclosed by the "high-level policies" of Gai. In this regard, Applicants are unclear as to how the "high-level policies" of Gai are from the system under study, as claimed. Instead, Gai teaches that "[t]he high-level policies … are selected by a network administrator." Reference is also made to lines 24-26 of column 6, which states that "operate in such a manner as to implement the high-level policies selected by the network administrator." As evidenced by this statement, the high-level policies disclosed by

Gai are not comparable to the claimed "stimuli and response data from said system under study." Instead, the high-level policies disclosed by Gai are more comparable to the claimed "administrative policy for administering the system under study." Thus, the Examiner has failed to establish that Gai identically discloses the claimed invention, as recited in claim 1, within the meaning of 35 U.S.C. § 102.

Claim 3

To teach the claimed "detecting a stimuli in a system under study and monitoring a response by a systems administrator to said stimuli," the Examiner cited column 9, lines 51-55 and column 12, lines 1-5. The Examiner's cited passage of column 9, lines 51-55 is completely silent as to detecting a stimuli in a system under study and monitoring a response by a systems administrator to the stimuli, as claimed. Instead, this passage refers to implementing a high-level traffic management policy to dissimilar intermediate devices in a network. The Examiner's second cited passage of column 12, lines 1-5 also fails to identically disclose this limitation. Although this passage refers to traffic types (presumably allegedly corresponding to the claimed "stimuli"), this passage is silent as to monitoring a response to a systems administrator to the stimuli.

To teach the claimed "forwarding said stimuli and said response to a policy maker suited to analyze said stimuli and said response," the Examiner cited column 9, lines 55-57. The Examiner's cited passage, however, refers to a policy and not a stimuli and response by a systems administrator to the stimuli, as claimed. Moreover, the Examiner's cited passage fails to disclose that the stimuli/response data is forwarded to a policy maker suited to analyze the data.

To teach the claimed "querying said policy maker for a preferred response to said stimuli," the Examiner cited column 7, lines 10-19. The Examiner's cited passage, however, refers to exchange of messages between an intermediate device and a policy server but is silent as to querying a policy maker for a preferred response to the stimuli. In this regard, the Examiner's cited passage is completely silent as to the stimuli.

To teach the claimed "formulating a policy for responding to said stimuli based upon said preferred response," the Examiner cited column 7, lines 21-24. Again, the Examiner's cited passage is completely silent as to the stimuli, upon which the policy is formulated.

For above-described reasons, the Examiner has failed to establish that Gai identically discloses the claimed invention, as recited in claim 1-20, within the meaning of 35 U.S.C. § 102. Applicants, therefore, respectfully submit that the imposed rejection of claims 1-20 under 35 U.S.C. § 102 for anticipation based upon Gai is not factually viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

> When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction. (emphasis added)

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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